

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1931

Laurence Leach,

Appellant,

v.

Waterway Car Wash,

Appellee.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: February 27, 2007

Filed: March 2, 2007

Before COLLOTON, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Laurence Leach appeals the district court's dismissal with prejudice of his civil complaint pursuant to Federal Rule of Civil Procedure 41(b). We construe Leach's notice of appeal as an implicit motion for leave to proceed in forma pauperis, and we grant Leach's request.

As to the merits, having carefully reviewed the record, we conclude that the district court did not abuse its discretion in dismissing the complaint. Leach failed to comply with the court's order instructing him to serve defendant and to file a return of service by a certain date, and the court had warned Leach that failure to comply would result in dismissal of his complaint. See Good Stewardship Christian Ctr. v.

Empire Bank, 341 F.3d 794, 797 (8th Cir. 2003) (dismissal under Rule 41(b) reviewed for abuse of discretion); Farnsworth v. City of Kansas City, Mo., 863 F.2d 33, 34 (8th Cir. 1988) (per curiam) (pro se litigants are not excused from complying with court orders). We believe, however, that the district court's order should be modified to dismiss the action without prejudice, as Leach's conduct did not rise to the level of willful disobedience or intentional delay. See Good Stewardship Christian Ctr., 341 F.3d at 797. Accordingly, we affirm, but modify the dismissal to be without prejudice.
